

Docket No.: 29488/38131
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of:
J. R. Lewis

Application No.: 10/047,220

Confirmation No.: 5743

Filed: January 14, 2002

Art Unit: 3653

For: DUMP STATION APPARATUS AND
METHOD FOR FILLING STOCK ORDERS

Examiner: J. A. Shapiro

AMENDED APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Amended Appeal Brief is submitted in response to the Notice of Non-Compliant Appeal Brief mailed September 16, 2008, wherein the Appeal Brief dated June 30, 2008 was identified as non-compliant because the Claims Appendix section included incorrect information in the heading. The heading of the Claims Appendix section has been corrected herein.

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I. REAL PARTY IN INTEREST

The real party in interest is the assignee, Walgreen Co., a corporate entity, located at 200 Wilmot Rd., Deerfield, Illinois 60015. The assignment to Walgreen Co. is recorded at Reel/Frame 012772/0529.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

Claims 1-3, 5-9, 14-23, 39, and 43 are pending, rejected, and appealed. Claims 40-42 are currently withdrawn. Claims 4, 10-13, and 24-38 are canceled.

IV. STATUS OF AMENDMENTS

After the final rejection mailed December 28, 2007, Appellants submitted a paper on February 26, 2008 entitled “Response After Final” arguing against the final rejections, as they pertain to pending claims 1-3, 5-9, 14-23, 39, and 43. These arguments were considered, as indicated in the Advisory Action, mailed March 21, 2008.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent claim 1 is directed to a dumping station (24) for use in a stock order filling system (10). The dumping station (24) comprises a collection area (16), a bin (28), an electronically controllable release latch (42), and a controller (50).

The collection area (16) includes a conveyor (16). (*See*, page 4, lines 1-2; and Figs. 1 and 2).

The bin (28) is disposed adjacent the conveyor (16) and has a receiving end (30), a discharge end (32), and an opening (e.g., shown in Fig. 7) extending between the receiving end (30) and the discharge end (32). (*See*, page 4, line 16; and Fig. 3). The receiving end (30) of the opening is adapted to receive articles. The bin (28) has a dump mode, in which articles in the bin (28) are discharged from the discharge end (32) of the opening onto the collection area (16), and a pick mode, in which the articles are retained in the receiving end (30) of the bin (28). (*See*, page 4, lines 9-24; and Fig. 3). The bin (28) is biased under the force of gravity toward the dump mode and is rotatable about an axis (26) and has a center of gravity (34) laterally offset from the axis (26) toward the discharge end (32). (*See*, page 4, lines 25-31; and Fig. 3).

The electronically controllable releasable latch (42) is selectively engageable with the bin (28) to selectively secure the bin (28) in the pick mode against the force of gravity. (*See*, page 5, lines 10-11; and Fig. 3). The latch (42) is responsive to a release signal to release the bin (28). (*See*, page 5, lines 17-19).

The controller (50) is operably coupled to the latch (42) and has a processor programmed to generate the release signal to release the latch (42). (*See*, page 8, lines 4-16). Upon the latch (42) releasing the bin (28), the bin (28) automatically switches from the pick mode to the dump mode under the force of gravity by rotating about the axis (26) thereby to discharge the articles in the bin (28) directly onto the conveyor (16). (*See*, page 4, lines 9-28; and page 5, lines 17-19). The processor is programmed to generate the release signal as a selected area of the conveyor (16) passes the dumping station (24). (*See*, page 8, lines 4-16).

Independent claim 15 is directed to a dumping station (24) for use in a stock order filling system (10) having a collection area (16). The dumping station (24) deposits articles onto the collection area (16). The dumping station (24) comprises a stationary support (38), a bin (28), a releasable latch (42), and a controller (50). (*See*, Fig. 3).

The stationary support (38) is permanently fixed against displacement relative to the collection area (16).

The bin (28) is hingedly mounted to the stationary support (38) for rotational motion relative to the stationary support (38). (*See*, page 4, lines 9-24; page 5, lines 3-9; and Fig. 3). The bin (28) comprises a receiving end (30), a discharge end (32), an opening (e.g., shown in Fig. 7) extending between the receiving end (30) and the discharge end (32), and a center of gravity (34) laterally offset from the stationary support (38) toward the discharge end (32) to bias the bin (28) under force of gravity toward a dump position. In the dump position, the discharge end (32) is proximal to the collection area (16) and articles placed in the bin (28) exit the discharge end (32) of the opening of the bin (28). (*See*, page 4, lines 9-24; and Fig. 3). The releasable latch (42) is positioned to hold the bin (28) against the force of gravity when manually placed in a pick position. (*See*, page 5, lines 10-11). In the pick position, articles placed in the receiving end (30) of the bin (28) remain in the article receiving end (30) of the bin (28). (*See*, page 4, lines 21-22).

The latch (42) is releasable to allow the bin (28) to pivot back toward the dump position and is responsive to a release signal to release the bin (28). (*See*, page 8, lines 4-16; and Fig. 3).

The controller (50) is operably coupled to the latch (42) and has a processor programmed to generate the release signal to release the latch (42). (*See*, page 8, lines 4-16). When the latch (42) is released, the bin (28) automatically moves from the pick position to the dump position under the force of gravity thereby to discharge articles from the discharge end (32) of the opening of the bin (28) onto the collection area (16). (*See*, page 4, lines 9-28; and page 5, lines 17-19).

Independent claim 39 is directed to a dumping system (24) for use in a stock order filling system (10) having a collection area (16). The dumping system (24) comprises first and second bins (28), first and second releasable latches (42), and a controller (50). (*See*, Figs. 3 and 7).

The first bin (28) has a receiving end (30), a discharge end (32), and an opening (e.g., shown in Fig. 7) extending between the receiving end (30) and the discharge end (32). The receiving end (30) of the opening is adapted to receive a first set of articles. The first bin (28) has a dump mode, in which the first set of articles in the first bin (28) are discharged from the discharge end (32) of the opening onto the collection area (16), and a pick mode, in which the first set of articles are retained in the first bin (28). (*See*, page 4, lines 9-24). The first bin (28) is biased under force of gravity toward the dump mode. (*See*, page 4, lines 25-31).

The first releasable latch (42) is positioned to retain the first bin (28) in the pick mode against the force of gravity, and is responsive to a first release signal to release the first bin (28). (*See*, page 5, lines 10-11).

The second bin (28) has a receiving end (30), a discharge end (32), and an opening (e.g., shown in Fig. 7) extending between the receiving end (30) and the discharge end (32), the receiving end (30) of the opening adapted to receive a second set of articles. The second bin (28) has a dump mode, in which the second set of articles in the second bin (28) are discharged from the discharge end (32) of the opening onto the collection area (16), and a pick mode, in which the second set of articles are retained in the second bin (28). (*See*, page 4, lines 25-31). The second bin (28) is biased under force of gravity toward the dump mode. (*See*, page 4, lines 25-31).

The second releasable latch (42) is positioned to retain the second bin (28) in the pick mode against the force of gravity, and is responsive to a second release signal to release the second bin (28). (*See*, page 5, lines 10-11).

The controller (50) is operably coupled to the first latch (42) and the second latch (42) and has a processor programmed to generate the first release signal to release the first latch (42) and the second release signal to release the second latch (42). (*See*, page 8, lines 4-16). When the first and second latches (42) are released, the first bin (28) and the second bin (28) automatically switch from the pick mode to the dump mode under the force of gravity

thereby to discharge the first set of articles in the first bin (28) and the second set of articles in the second bin (28) onto the collection area (16). (*See*, page 4, lines 9-28; and page 5, lines 17-19).

The collection area (16) comprises a conveyor (16). (*See*, page 4, lines 1-2; and Figs. 1 and 2).

The processor is programmed to generate the first release signal as a selected area of the conveyor (16) passes the first bin (28) to dump the first set of articles onto the selected area and is programmed to generate the second release signal as the selected area of the conveyor (16) passes the second bin (28) to dump the second set of articles onto the selected area. (*See*, page 8, lines 4-16).

Independent claim 43 is directed to a dumping station (24) for use in a stock order filling system (10). The dumping station (24) comprises a conveyor (16), a stationary support (38), a bin (28), a releasable latch (42), and a conveyor (16). (*See*, Fig. 3).

The stationary support (38) is permanently fixed against displacement relative to the conveyor (16).

The bin (28) is pivotably supported on top of the stationary support (38) and comprises a bottom wall (e.g., shown in Figs. 3 and 7), a rear wall (39) fixed to the bottom wall, opposing sidewalls (e.g., shown in Figs. 3 and 7) fixed to the bottom and rear walls, an open top (e.g., shown in Fig. 7), and an open front (e.g., shown in Fig. 7). The bin (28) is pivotable relative to the conveyor (16) between a pick mode for receiving articles through the open top, and a dump mode for discharging articles through the open front. (*See*, page 4, lines 9-24; and Fig. 3). In the pick mode, a first portion of the bottom wall that is located adjacent the open front is disposed above a second portion of the bottom wall that is located adjacent the rear wall (39). In the dump mode, the second portion of the bottom wall is positioned above the first portion of the bottom wall.

The releasable latch (42) is selectively engageable with the bin (28) to selectively secure the bin (28) in the pick mode against the force of gravity. (*See*, page 5, lines 10-11). The latch (42) is responsive to a release signal to release the bin (28). (*See*, page 5, lines 17-19).

The controller (50) is operably coupled to the latch (42) and has a processor programmed to generate the release signal to release the latch (42). (*See*, page 8, lines 4-16). Upon the latch (42) releasing the bin (28), the bin (28) automatically switches from the pick mode to the dump mode under the force of gravity. (*See*, page 4, lines 9-28; and page 5, lines 17-19).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-3, 5-23, 39, and 43 are obvious over Emsley et al. (U.S. Patent No. 4,509,635) in view of Boyd (U.S. Patent No. 6,208,908).

VII. ARGUMENT

A. INTRODUCTION

The rejections of claims 1-3, 5-23, 39, and 43 set forth in the final Office Action mailed December 28, 2007 are improper and should be reversed because the examiner has failed to establish a *prima facie* case of obviousness. First, the cited patent references fail to teach or suggest each and every limitation recited in the claims. Second, the examiner's asserted suggestion to modify the cited references to arrive at the claimed invention is legally deficient. Third, there is no suggestion to modify the cited references.

B. CITED ART FAILS TO TEACH OR SUGGEST EACH AND EVERY LIMITATION

The recited invention is generally directed to a dumping station including a bin having an opening. The bin is rotatable such that articles can be received into, and discharged from, the same opening. In one embodiment described with reference to Fig. 3, for example, the opening is configured such that the bin has an open top and an open front, which in Fig. 3 is slanted.

Independent Claims 1, 15, and 39

Independent claims 1, 15, and 39 of the present application recite a dumping station comprising, in part, a bin comprising a receiving end, a discharge end, and an opening extending between the receiving and discharge ends. The opening comprises a single opening. Additionally, independent claims 1, 15, and 39 recite that articles are received into the receiving end *of the opening*, and discharged from the discharge end *of the opening*.

Neither Emsley nor Boyd, alone or in combination, teach or suggest such features in combination with the remaining elements of independent claims 1, 15, and 39.

The Emsley Reference

Emsley teaches rotatable receptacles 2 having receiving openings and discharge openings that are arranged on opposite ends of the receptacles 2, and therefore, are separate and distinct from each other. See Fig. 3 of Emsley, for example. As such, the receptacles in Emsley essentially resemble chutes. The discharge openings are equipped with flaps 9 for selectively discharging the contents of the receptacles.

The Boyd Reference

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The final Office Action states:

...although Boyd discloses a bin with a receiving end at the top and a discharge opening on the side, i.e., 90 degrees to the receiving end, it would have been obvious for one of ordinary skill in the art to place the receiving end opposite the discharge end with the top portion remaining open since there are only a finite number of locations for a discharge end and a receiving end...

See, December 28, 2007 final Office Action, last line of page 6 continuing onto page 7.

Appellant is perplexed by this interpretation of Boyd because, as depicted above, Boyd does not disclose “a bin with *a receiving end at the top* and *a discharge opening on the side*, i.e., 90 degrees to the receiving end...” (emphasis added). Rather, as discussed, Boyd discloses a bin with a receiving opening on one end, and a discharge opening on the other. This is in direct contrast to the structure recited in the pending claims.

Independent Claim 43

Independent claim 43 recites a dumping station comprising, in part, a bin having an open top and an *open front* in combination with various other features. As described above, neither Emsley nor Boyd discloses a bin having an open top and an *open front*. Rather, each discloses a bin, or more accurately a chute, having an open top and an *open bottom*.

C. THE EXAMINER’S ASSERTED MODIFICATIONS ARE LEGALLY DEFICIENT

In addition to the cited references failing to teach or suggest each and every limitation of the claims, the examiner’s proposed modifications of the references are legally deficient.

“[R]ejections based on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 661 F.3d 977, 988 (CA Fed. 2006). This language was cited with approval by the Supreme Court of the United States in *KSR Int’l v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385 (2007).

In the final Office Action, the examiner seems to assert that a suggestion to modify Boyd can be found within the knowledge of a person having ordinary skill in the art at the time the invention was made. Specifically, the examiner states that “...one ordinarily skilled in the art would have found it logical to place the openings where they are needed based on

the ergonomic and workflow requirements of the article handling situation...” *See*, December 28, 2007 final Office Action, page 7. Appellant respectfully submits that such a suggestion is legally deficient.

As discussed above, Boyd is unequivocally directed to a receptacle 12 that operates with separate and distinct receiving and discharge openings. The discharge opening 30 is equipped with a retractable door 33 to selectively discharge articles from the receptacle 12. This door 33 is partly required because the receptacle in Boyd operates in a fixed rotational disposition. Therefore, common sense and logic would not lead a person having ordinary skill in the art at the time the invention was made to alter or modify the receptacle 12 to include a common opening for receiving and discharging articles because it would not be successful without substantial further modification of the device. Any such further modification would clearly change the principle of operation of the invention disclosed by Boyd, thereby rendering the suggestion legally deficient. MPEP § 2145.

Additionally, while Emsley discloses a receptacle that is rotatable between various positions for receiving and discharging articles, Emsley too requires separate and distinct receiving and discharge openings. But for the receptacles 2 of Emsley being rotatable, Emsley and Boyd are generally identical. That is, each disclose receptacles having open tops for receiving articles and bottoms equipped with doors that can be opened to discharge the articles. Therefore, in light of Emsley, a person having ordinary skill in the art would only consider modifying Boyd to operate in a similarly configured rotatable application. Nothing, however, in Emsley, Boyd, or otherwise suggests using a bin including a single opening extending between the receiving and discharge ends for receiving and discharging articles. Any assertion otherwise can only be based on hindsight reasoning gleaned from Appellant’s own disclosure, which also constitutes a legally deficient basis for establishing an obviousness rejection. MPEP § 2145.

D. THERE IS NO SUGGESTION TO MODIFY EMSLEY AND/OR BOYD

In addition to the examiner’s asserted suggestion being deficient, Appellants respectfully submit that there is no suggestion in Emsley, Boyd, the knowledge of a person having ordinary skill in the art, or any of the other art of record for modifying Emsley and/or Boyd to arrive at the claimed subject matter.

E. CONCLUSION

In light of the foregoing remarks, Appellants respectfully submit that claims 1-3, 5-9, 14-23, and 39-43 are not obvious in view of the cited references, and therefore, kindly request the Board to reverse the outstanding rejections.

No fees are believed to be necessary for proper entry and consideration of this Amended Appeal Brief. However, in the event any additional fees are necessary, kindly charge the cost thereof to Deposit Account No. 13-2855, Order No. 29488/38131.

Dated: September 23, 2008

Respectfully submitted,

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CLAIMS APPENDIX

1. (previously presented) A dumping station for use in a stock order filling system, the dumping station comprising:

a collection area including a conveyor;

a bin disposed adjacent the conveyor, the bin having a receiving end, a discharge end, and an opening extending between the receiving end and the discharge end, the receiving end of the opening adapted to receive articles, the bin having a dump mode, in which articles in the bin are discharged from the discharge end of the opening onto the collection area, and a pick mode, in which the articles are retained in the receiving end of the bin, the bin being biased under force of gravity toward the dump mode, the bin being rotatable about an axis, the bin having a center of gravity laterally offset from the axis toward the discharge end;

an electronically controllable releasable latch selectively engageable with the bin, the latch selectively securing the bin in the pick mode against the force of gravity, the latch being responsive to a release signal to release the bin; and

a controller operably coupled to the latch and having a processor programmed to generate the release signal to release the latch, wherein upon the latch releasing the bin, the bin automatically switches from the pick mode to the dump mode under the force of gravity by rotating about the axis thereby to discharge the articles in the bin directly onto the conveyor;

wherein the processor is programmed to generate the release signal as a selected area of the conveyor passes the dumping station.

2. (original) The dumping station of claim 1, in which the releasable latch comprises an electromagnet.

3. (original) The dumping station of claim 1, in which the processor is programmed to assign pick orders to the dumping station.

4. (canceled)

5. (previously presented) The dumping station of claim 1, further comprising a lid attached to the receiving end of the bin, the lid being movable between an active position away from the opening, to provide a visual indication that more articles are to be placed in the bin, and an inactive position covering at least a portion of the opening, to provide a visual indication that no more articles are to be placed in the bin.

6. (previously presented) The dumping station of claim 1, further comprising a support shaft, wherein the bin is pivotably mounted on the support shaft, the bin having a center of gravity laterally offset from the support shaft so that the bin is biased to a dump position corresponding to the bin dump mode, the bin being rotatable to a pick position corresponding to the bin pick mode.

7. (original) The dumping station of claim 6, in which a weight is attached to the bin near the discharge end to laterally shift the center of gravity of the bin toward the discharge end.

8. (original) The dumping station of claim 6, further comprising a dump pedestal positioned to engage the bin in the dump position, and a pick pedestal positioned to engage the bin in the pick position, the pick pedestal carrying the releasable latch.

9. (original) The dumping station of claim 8, in which the dump pedestal is oriented to direct articles onto the collection area.

10-13. (canceled)

14. (original) The dumping station of claim 1, in which the bin is manually placed in the pick mode.

15. (previously presented) A dumping station for use in a stock order filling system having a collection area, the dumping station depositing articles onto the collection area, the dumping station comprising:

a stationary support permanently fixed against displacement relative to the collection area;

a bin hingedly mounted to the stationary support for rotational motion relative to the stationary support, the bin comprising a receiving end, a discharge end, an opening extending between the receiving end and the discharge end, and a center of gravity laterally offset from the stationary support toward the discharge end to bias the bin under force of gravity toward a dump position, in which the discharge end is proximal to the collection area and articles placed in the bin exit the discharge end of the opening of the bin;

a releasable latch positioned to hold the bin against the force of gravity when manually placed in a pick position, in which articles placed in the receiving end of the bin remain in the article receiving end of the bin, the latch being releasable to allow the bin to pivot back toward the dump position, the latch being responsive to a release signal to release the bin; and

a controller operably coupled to the latch and having a processor programmed to generate the release signal to release the latch, wherein the bin automatically moves from the pick position to the dump position under the force of gravity thereby to discharge articles from the discharge end of the opening of the bin onto the collection area.

16. (original) The dumping station of claim 15, in which the releasable latch comprises an electromagnet.

17. (original) The dumping station of claim 15, further comprising a dump pedestal positioned to engage the bin discharge end in the dump position, and a pick pedestal positioned to engage the bin in the pick position, wherein the pick pedestal carries the releasable latch.

18. (original) The dumping station of claim 17, in which the dumping pedestal is oriented to direct articles onto the collection area.

19. (original) The dumping station of claim 15, in which the processor is programmed to assign pick orders to the dumping station.

20. (previously presented) The dumping station of claim 15, in which the is programmed to generate the release signal as a selected area of the conveyor passes the dumping station.

21. (original) The dumping station of claim 15, in which the support is positioned below the bin.

22. (original) The dumping station of claim 15, in which a weight is attached to the bin near the discharge end to laterally shift the center of gravity of the bin toward the discharge end.

23. (previously presented) The dumping station of claim 15, further comprising a lid attached to the receiving end of the bin, the lid being manually movable between an active position away from the opening, to provide a visual indication that more articles are to be placed in the bin, and an inactive position covering at least a portion of the opening, to provide a visual indication that no more articles are to be placed in the bin.

24 - 38. (canceled).

39. (previously presented) A dumping system for use in a stock order filling system having a collection area, the dumping system comprising:

a first bin having a receiving end, a discharge end, and an opening extending between the receiving end and the discharge end, the receiving end of the opening adapted to receive a first set of articles, the first bin having a dump mode, in which the first set of articles in the first bin are discharged from the discharge end of the opening onto the collection area, and a pick mode, in which the first set of articles are retained in the first bin, the first bin being biased under force of gravity toward the dump mode;

a first releasable latch positioned to retain the first bin in the pick mode against the force of gravity, the first releasable latch being responsive to a first release signal to release the first bin;

a second bin having a receiving end, a discharge end, and an opening extending between the receiving end and the discharge end, the receiving end of the opening adapted to receive a second set of articles, the second bin having a dump mode, in which the second set of articles in the second bin are discharged from the discharge end of the opening onto the collection area, and a pick mode, in which the second set of articles are retained in the second bin, the second bin being biased under force of gravity toward the dump mode;

a second releasable latch positioned to retain the second bin in the pick mode against the force of gravity, the second releasable latch being responsive to a second release signal to release the second bin; and

a controller operably coupled to the first latch and the second latch and having a processor programmed to generate the first release signal to release the first latch and the second release signal to release the second latch, wherein the first bin and the second bin automatically switch from the pick mode to the dump mode under the force of gravity thereby to discharge the first set of articles in the first bin and the second set of articles in the second bin onto the collection area;

wherein the collection area comprises a conveyor, and the processor is programmed to generate the first release signal as a selected area of the conveyor passes the first bin to dump the first set of articles onto the selected area and is programmed to generate the second release signal as the selected area of the conveyor passes the second bin to dump the second set of articles onto the selected area.

40. (withdrawn) The dumping station of claim 1, further comprising a storage rack disposed adjacent to the bin.

41. (withdrawn) The dumping station of claim 40, wherein the storage rack includes an indicator.

42. (withdrawn) The dumping station of claim 41, wherein the controller is operably coupled to the indicator, wherein the controller directs the indicator to indicate the articles to be picked from the shelf section.

43. (previously presented) A dumping station for use in a stock order filling system, the dumping station comprising:

a conveyor;

a stationary support permanently fixed against displacement relative to the conveyor;

a bin pivotably supported on top of the stationary support, the bin comprising a bottom wall, a rear wall fixed to the bottom wall, opposing sidewalls fixed to the bottom and rear walls, an open top, and an open front,

the bin pivotable relative to the conveyor between a pick mode for receiving articles through the open top, and wherein a first portion of the bottom wall that is located adjacent the open front is disposed above a second portion of the bottom wall that is located adjacent the rear wall, and a dump mode for discharging articles through the open front, and wherein the second portion of the bottom wall is positioned above the first portion of the bottom wall;

a releasable latch selectively engageable with the bin, the latch selectively securing the bin in the pick mode against the force of gravity, the latch being responsive to a release signal to release the bin; and

a controller operably coupled to the latch and having a processor programmed to generate the release signal to release the latch, wherein upon the latch releasing the bin, the bin automatically switches from the pick mode to the dump mode under the force of gravity.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.